IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.688 OF 2007

DATE OF DECISION: JULY 25, 2007

Sukhdev Singh

.....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Piyush Jindia, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

Mr. Suresy Goyal, Advocate,
for the complainant.

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RANJIT SINGH, J.

Can a person, who is not an accused before the Court, be charge-sheeted without being summoned under Section 319 Cr.P.C? This significant question of law would arise in the present petition.

The petitioner, who was declared innocent by the investigating agency and shown in Column No.2 in the final report filed before the Court under Section 173 Cr.P.C. is now charge-sheeted by the Court for an offence under Section 302 IPC. The grievance is that the petitioner can not be charged

as he is not before the Court as one of the accused being in Column No.2.

The facts, in brief, are that an FIR under Sections 308, 323, 34 IPC was registered on 17.5.2006 on the statement made by one Pishora Singh. The complainant had a common wall with one Surjit Singh in a house located at Chuhanke Kalan. The brick wall had been erected by sharing the cost equally by the complainant and said Surjit Singh. The parties have agreed that if any one was to raise the height of the wall to cover it with roof, then he would have to spend the entire amount for the said purpose. Since the complainant wanted to raise the wall, he bought the bricks and engaged mesons etc. for doing so. While the construction was in progress, Surjit Singh allegedly raised objection to the raising the height of the wall. The complainant apprised him of the decision taken before the Panchayat in this regard. As per the allegation, Surjit Singh called his brother Ajaib Singh, Ranjit Singh and Sukhdev Singh, who were armed with sticks and balas except for Ranjit Singh, who was empty handed. Ranjit Singh and Ajaib Singh raised lalkara for teaching a lesson to the complainant, whereupon Surjit Singh gave a blow with bala on the left side of the head of Pishora Singh. Sukhdev Singh also gave a blow with stick on the left side of the jaw of the complainant, who, then fell down from the shuttering, as a result of which he received injuries on his finger of left hand, right ankle and on left side ribs. The incident took place in the presence of wife as well as masons, labour etc., who shouted for help and then the accused persons fled away from the scene. Pishora Singh, complainant, breathed his last on 9.6.2006 and accordingly an offence under Section 302 IPC was

added in the FIR.

The case was investigated by Superintendent of Police, Head Quarter Barnala, who found that petitioner, Sukhdev Singh, was not present at the place of alleged occurrence and accordingly was declared innocent. In the challan presented on 21.7.2006, petitioner Sukhdev Singh, was shown in Column No.2.

On the basis of investigation and the finding as mentioned, an application was moved by the State on 8.9.2006, seeking discharge of the petitioner. The Additional Sessions Judge, Barnala, however, took up this application for consideration and came to conclude that the application for discharge was ill-conceived, erroneous and with oblique motive and as such, dismissed the same and accordingly framed charge under Section 302 IPC against the petitioner and other co-accused with an alternative charge under Section 304 IPC against them separately. This order is impugned in the present revision on various grounds including the one that the petitioner, who is not an accused before the Court, could not have been charged by the Additional Sessions Judge in the manner he has done. It is submitted that the only way before the Sessions Court to proceed against a person shown in Column No.2 is the stage of 319 Cr.P.C. and he would not have any power otherwise to proceed against such a person who is found innocent and shown in Column No.2. It is also pleaded that person shown in Column No.2 is not an accused before a Court and since the Sessions Court can not validly summon a person prior to the stage of Section 319 Cr.P.C., the present action of the Additional Sessions Judge, in charge-sheeting the petitioner is legally not sustainable.

Counsel for the parties have been heard.

The facts, as afore-mentioned, are not in much dispute. Conceded position is that the petitioner is shown in Column No.2 and is not present as an accused before the Court. In ***Madan Lal Vs. State of Punjab*** JT 1999 (10) SC 432, the Hon'ble Supreme Court, made observation with regard to the action of keeping a person in custody, though not challaned after investigation. This was a case where criminal proceedings, on the basis of FIR, were initiated and the person arrested. No charge-sheet was filed against the petitioner in the said case and his name was shown in Column No.2. Despite this fact, he was continued to be kept in custody and even his prayer for bail was rejected. Under the circumstances, the Hon'ble Supreme Court observed " we fail to understand how after filing of chargesheet when the prosecution did not file any chargesheet against the applicant the court is keeping the applicant in custody. It is only when in course of trial some materials if at all will come the court may exercise the power under Section 319 Cr.P.C. The impugned order rejecting the application for bail so far as the applicant is concerned therefore is erroneous."

The issue raised in the present petition that whether the Sessions Court could add a new person as an accused in a case at a stage prior to collecting evidence did arise in ***Ranjit Singh Vs. State of Punjab,*** AIR 1998 Supreme Court 3148. In fact, prior to Ranjit Singh's case (supra), the Hon'ble Supreme Court in the case of Kishun Singh Vs. State of Bihar, 1993 (2) SCC 16 had held that though additional accused could not be summoned to face trial under the provisions of Section 319 Cr.P.C. prior to recording of evidence,

yet the Sessions Court could legally do so by invoking the provisions of Section 193 Cr.P.C. This view was re-affirmed by Hon'ble Supreme Court in Nissar Vs. state of U.P., 1995 (2) SCC 23. However, Hon'ble Supreme Court in the case of Rajkishore Prasad Vs. State of Bihar, 1996 (4) SCC 495 expressed certain reservations about the legal position propounded in Kishun Singh's case (supra) and accordingly this question was referred for consideration by a Larger Bench and it is in this background that the judgment in Ranjit Singh's case (supra) was rendered. After referring to various judgments, the Hon'ble Supreme Court in the case of Ranjit Singh (supra), held as under:-

> "16. It is clear that during the said stage the Court of Session can deal only with the accused who is referred to in Section 209. The accused who can appear or can be brought before a Session Court at that stage is only that accused who is referred to in Section 209. Section 227 deals with the power of the court to decide whether that accused is to be discharged or not. If he is not discharged the Session Court is obliged to frame a charge against the accused as per Section 228 of the Code. Thereafter the plea of that accused has to be recorded as enjoined by Section 229. The stage of evidence collection commence only next. (vide Sections 230 & 231 of the Code);
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> 17. So from the state of committal till the Session court reaches the stage indicated in Section 230 of the Code that Court can deal with only the accused referred to in

Section 209 of the Code. There is no intermediary stage till then for the Session Court to add any other person to the array of the accused.

18. Thus, once the Session Court takes cognizance of the offence pursuant to the committal order the only other stage when the Court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. We are unable to find any other power for the Session Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers."

Having so held, the Hon'ble Supreme Court noticed that one question still survived for an answer. Hon'ble Court then referred to a situation where the Sessions Court was to notice from the material produced but before any evidence is taken, that any other person should also have necessarily been made an accused, without which the framing of the charge would be defective. It went on to notice that would the Sessions Court then be completely powerless to deal with such a contingency? In this regard, the Hon'ble Supreme Court referred to another situation where the material produced by the investigating agency was to show positive involvement of a person who had not been arrayed as an accused due to inadvertence or omission, then was the Court to wait until the

evidence was collected? Answering these situations, the Hon'ble Supreme Court held as under:-

> "21. Though such situations may arise only in extremely rare cases the Session Court is not altogether powerless to deal with such situations to prevent miscarriage of justice. It is then open to the Session Court to send a report to the High Court detailing the situation so that the High Court can in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left out accused. But we hasten to add that the said procedure need be resorted to only for rectifying or correcting such grave mistakes."

It would be, thus, noticed that Kishun Singh's case (supra) though has not specifically over-ruled Ranjit Singh's case (supra) but has even not followed the same. Nissar's case (supra) again was not over-ruled but impliedly not followed. Since Ranjit Singh's case (supra) has specifically dealt with the ratio laid down in Kishun Singh's case and Nissar's case (supra) on being referred to a larger Bench, it would be reasonable to assume that ratio laid down in these two cases may not be open to be followed, though these cases were not specifically over-ruled. The power of the Sessions Court to add an additional accused though may not be in doubt while exercising powers under Section 319 Cr.P.C. but, as per the existing position of law, Sessions Court would not have power to summon additional accused prior to the stage of Section 319 Cr.P.C. In other words, the Court of Session has no power, as per the law laid down

by Hon'ble Supreme Court, to summon any additional accused under Section 193 Cr.P.C.

Learned counsel for the respondent has referred to a fact that even the view taken in Ranjit Singh's case (supra) has been doubted by Hon'ble Supreme Court and matter has been again referred to a larger Bench by the Hon'ble Supreme Court in the case of ***Dharam Pal and others Vs. State of Haryana and another,*** (2006) 1 Supreme Court Cases (Cri.) 273. The relevant observations in this regard are as under:-

> "3. Prima facie, we do not think that the interpretation reached in ***Ranjit Singh case*** is correct. In our view, the law was correctly enunciated in ***Kishun Singh case.*** Since the decision in ***Ranjit Singh case*** is of three Judge Bench, we direct that the matter may be placed before the Hon'ble the Chief Justice for placing the same before a larger Bench."

Till the time the controversy is set at rest by over-ruling the ratio laid down in Ranjit Singh's case (supra), it will continue to hold the field. Mere reference after doubting the view taken in a particular case would not mean that the said decision of the Hon'ble Supreme Court can be ignored. Accordingly, as on date, the law laid down by the Hon'ble Supreme Court in Ranjit Singh's case (supra) is the law required to be followed by all Courts in the territory of India in view of Article 141 of the Constitution of India. The position, as such, in view of this law, is that powers of Sessions Court under Section 193 Cr.P.C. to take cognizance of the offence does not include

summoning of the person or persons whose complicity in the commission of the trial can prima-facie be gathered from the materials available on record. Once the Sessions Court takes cognizance of the offence pursuant to the committal order the only other stage when the Court is empowered to add any other person as an accused is after reaching the evidence collection stage, which would be under Section 319 Cr.P.C. In other words, the Court of Session as held in Ranjit Singh's case (supra), by over-ruling the earlier view in this regard, in Kishun Singh's case (supra) that an additional accused could be added only under Section 319 Cr.P.C. after recording evidence and not at any stage prior thereto i.e. under Section 193 while taking cognizance of the offence pursuant to the committal order. In view of this position of law as on date, the impugned order can not be sustained. Since the petitioner concededly is shown in Column No.2, he could be added as an additional accused only at the stage of Section 319 Cr.P.C. The petitioner in this case has been charge-sheeted at the time of taking cognizance of the offence, which, according to Ranjit Singh's case (supra) is not permissible.

This order, as such, can not be sustained and is accordingly set-aside. However, the Court would be at liberty to summon the petitioner as an additional accused at any subsequent stage, if sufficient material is placed on record against him for summoning him in terms of the legal principles settled in this regard. It is further clarified that the Court would be at liberty to now summon the petitioner in case some evidence has appeared against him after framing of charge. The Court would follow the further proceedings in

accordance with law.

The revision petition is allowed in the above terms.

July 25, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**